MISCELLANY.

The Ouija Board in Court.—The ouija board, that great arbiter of questions great and small for those whose minds run in superstitious channels, and for others a more or less harmless form of amusement, has at last been the subject of judicial decision. In the case of Baltimore Talking Board Co. Inc. *v.* Miles, 273 Fed. 531, it was held that a ouija board is a "game" within the meaning of that word as used in internal revenue act imposing a tax on games and sporting goods. The court said in part:

"The plaintiff says that its ouija boards are not games, nor are they among the things which are commonly or commercially known as sporting goods. Much legal and lexicographical learning and industry has been exhibited in gathering together all the definitions of games heretofore given. I have no ambition to add to their number, but I am persuaded that ouija boards are games, or, more accurately, implements with which games are played, within the sense of the word as used in the statute in question. One of these boards is a thing which one or more people employ for their amusement or sport, and with which they think they are playing at a game. The use of it is all the more interesting, in that it gives results which the players may not always suppose to be foretellable. In this respect it resembles various games of solitaire, the telling of fortunes by cards, etc. It is quite clearly among the general class of things which Congress intended to tax, and it is sufficiently identified by the words it used. There is a subordinate question raised. The plaintiff says that the larger part of its sales were of small-sized boards, sold by it at low price to merchants, who distributed them as advertisements. It claims that in any event they are not taxable, because they are children's toys or games, and as such are excepted by the act itself. It may be that there are some who think that those who use ouija boards are childish enough. That is a matter of opinion upon which courts need not take sides. They are not the sort of thing which would interest many who are children in years. The picture on the envelope in which the plaintiff distributes these diminutive boards shows that those who are supposed to use them are, for the most part, adults."

Wife Inherits from Husband Whom She Killed.—The widow, a citizen of Kansas, and minor daughter of an intestate, were the claimants to his property situated in Oklahoma; the former claiming to be entitled to one-half of his land and its rents and profit, and the latter claiming as his sole heir. In both states there are statutes to the effect that a person convicted of killing another cannot inherit property from the person killed. The widow had been convicted, in

Kansas, of manslaughter in the third degree in unlawfully killing her husband and was sentenced to the state industrial farm for women. The United States District Court for the Western District of Oklahoma was of the opinion that she inherited one-half of the land in Oklahoma, notwithstanding her conviction of manslaughter in Kansas.

The United States Circuit Court of Appeals, Eighth Circuit, affirmed the decree in Harrison *v.* Moncravie, 264 Federal Reporter, 776, holding the Kansas law to be a law of inheritance, not a law fixing the status of persons domiciled within the state, and not controlling inheritance as to lands located in Oklahoma, while the law of the latter state only disqualified a person from inheriting on conviction in the courts of the state. In announcing the conclusion of the court relative as to the Oklahoma statute, Judge Sanborn said:

"Where the statute of a state of the location of the real estate of the decedent by its terms disqualifies a person who is convicted of taking the life of another from inheriting or receiving any interest in the estate of such decedent, such conviction in another state or country has no effect to disqualify or disable the person so convicted from inheriting or receiving the interest in the estate in the state of the location of the real estate which he or she would have been entitled to receive if such conviction had never been had."

High Standards of the Legal Profession.—In Cochrane *v.* Garvan, 263 Fed. 940, 944, the court said:

"An attorney who measures up to the highest standards of his profession must not only be learned in jurisprudence, but must be ever alert to encourage and even to urge upon his clients the recognition of moral obligations as well as a compliance with statutes as interpreted by decisions. The lawyer, who knows only the law, and not the principles of righteousness and justice upon which law should be founded, fails to realize that with intellect, but without conscience, he cannot discharge his duty as a member of that profession which peculiarly requires a clear conception of the great fundamental distinction between right and wrong, whenever a moral question is involved."

Inherent "Equitable" Powers of Law Courts.—An interesting question was presented in Williams *v.* Miller (D. C., W. D., Va. 1918), 249 Fed. 495, and a decision reached by an ingenious line of argument. The decision and reasoning on which it was based were affirmed in Miller *v.* Williams (C. C. A., 4th Cir. 1919), 258 Fed. 216. A recovered judgment against B, a citizen of West Virginia, on the law side of the Federal District Court of West Virginia. Because of fraud practiced by B, A gave him a release of the judgment, which release

was recorded in the Clerk's office of the court in which the judgment was rendered.[1] Later A discovered that B had property in Virginia, wished to attach the same, and having served the defendant in that state, brought an action on the equity side in the Federal District Court of Virginia to cancel the release and subject B's Virginia land to A's original claim. B relied on § 723 of the revised Statutes,[2] which provides: "Suits in equity shall not be sustained in any court of the United States in any case where a plain, adequate, and complete remedy may be had at law." His contention thereunder was that A could have procured the West Virginia law court to cancel the entry of satisfaction because of the jurisdiction of that court over its own records and that failure to pursue this procedure deprived B of a right of trial by jury. The court admitted that an application to the West Virginia law court was possible, but pointed out that the law court's action in this matter would have been but the exercise of an inherent "equitable power", and since the question could have been brought on by motion, no jury trial of the issue could therefore have been demanded. The court concluded that it would be a foolish thing to send B from an equity court to a law court to procure equitable relief, and granted the plaintiff the desired decree.

It is undoubtedly true today that a court of law will entertain a motion to cancel a mistaken or fraudulent entry of satisfaction,[3] and the power of the court thus to act has been ascribed to its control over its records.[4] It is true that the plaintiff may be required to release the defendant to the extent of the amount he has paid [5] or that the judgment may be declared reinstated to the extent of the amount unpaid.[6] The order of the court sometimes directs the clerk to remove the satisfaction piece from the files,[7] and sometimes contains an order vacating the satisfaction and causing the clerk to annex a copy of the rule to the record.[8] Now and again, however, loose talk is indulged in to the effect that the law court, in using its power as above indicated, is exercising what is termed an "equitable jurisdiction" assumed by court of law.[9]

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[1] Ross *v.* Miller (C. C. A. 1918) 252 Fed. 697.

[2] 36 Stat. 1163, U. S. Comp. Stat. (1916) § 1244.

[3] Keogh *v.* Delaney (1878), 40 N. J. L. 97; Fuller *v.* Baker (1874), 48 Cal. 632; Cohen *v.* Camp (1870), 46 Mo. 179; but see Henley *v.* Hastings (1853), 3 Cal. *341.

[4] Ackerman *v.* Ackerman (1882), 44 N. J. L. 173; Murphy *v.* Flood (Pa. 1853), 2 Grant *411; see Wilson *v.* Stilwell (1863), 14 Oh. St. 464, 468.

[5] Faughnan *v.* City of Elizabeth (1895), 58 N. J. L. 309, 33 Atl. 212; see Lee *v.* Vacuum Oil Co. (1891), 126 N. Y. 579, 27 N. E. 1018.

[6] Haggin *v.* Clark (1882), 61 Cal. 1.

[7] McGregor *v.* Comstock (1863), 28 N. Y. 237.

[8] Wardell *v.* Eden (N. Y. 1800), 2 Johns. 121, 126, *aff'd.* (1801), 2 Johns. 258.

[9] See Laughlin *v.* Fairbanks (1844), 8 Mo. 367, 372.

For what reasons can this jurisdiction of the law court be deemed "equitable"? When the court speaks of "inherent equitable jurisdiction" it seems that it must mean one of two things: either that courts of law took over this form of relief from courts of equity, or that it has characteristics so common to equitable actions and rare in actions at law as to stamp it as inherently "equitable" in nature.

To consider this last first: the fact that the order may be directed to a person to do a thing gives no basis for identifying it with an equitable decree, since it does not order the defendant to do something, but announces the fact of cancellation and directs the clerk of the court, a ministerial officer, in pursuance thereof to change the record.[10] The failure unconditionally to vacate the record of satisfaction where the defendant has already paid part does not stamp the proceeding indubitably as equitable, merely because of a common-sense requirement. This brings us to the point of considering whether the procedural form of motion is a sure indication of the equitable nature of the relief sought. Obviously it is not.

In addition, the history of the power of the court to give relief in the case of a fraudulently entered judgment or satisfaction will, it is believed, point to an origin quite definite and founded not in equity but in law. In the principal case the plaintiff sought to escape the effect of the release and enjoy the judgment. It will be illuminating to consider the reverse of this situation, *viz.*. where the defendant wished to vacate a judgment and enter up satisfaction where he had been discharged by the giving of the release after the judgment. Here the defendant applied for a writ of *audita querela*, said by Blackstone to be "in the nature of a bill in equity",[11] but also classified as one of the "proceedings in the nature of appeals from the proceedings of the King's courts of law".[12] This description of the writ as being "in the nature of a bill in equity" seems merely a way of saying that the relief resembles that which a court of equity might give, and obviously does not deny that the writ is issued by a law court. Later (it is not clear at just what time) the defendant was granted relief on motion "in cases of evident oppression",[13] and subsequently the practice freely to give relief on motion in similar cases became well recognized.[14] But a distinction was made in those cases in which the

[10] Wardell *v.* Eden, *supra*, footnote 8; McGregor *v.* Comstock, *supra*, footnote 5.

[11] 3 Bl. Comm. *405.

[12] 3 Bl. Comm. *402.

[13] Anon. (1700), 1 Salk. 93, note a; 3 Bl. Comm. *406.

[14] Potter *v.* Hunt (1888), 68 Mich. 242, 36 N. W. 58; Everitt *v.* Knapp (N. Y. 1810), 6 Johns. 331; see Parker *v.* Judge of Calhoun Circuit (1872), 24 Mich.. 408; Spafford *v.* City of Janesville (1862), 15 Wis. *474, 478. *Cf.* Stroheim *v.* Deimel (C. C. 1896), 73 Fed. 430. This case was reversed on appeal, Stroheim *v.* Deimel (C. C. A. 1897), 77 Fed. 802, on the grounds that the plaintiff had failed to make out

parties' affidavits were contradictory. Where there was no doubt as to any issue of fact, the motion was entertained. But where material facts were controverted, the court, disinclined to resolve the difficulty, adopted various expedients to escape this task. The defendant might be told to bring his *audita querela*,[15] or an action at law,[16] or the parties might be directed to frame issues;[17] and in one case an application to equity was advised, although the court expressly affirmed its jurisdiction to grant relief.[18] Where a release was pleaded by the judgment debtor, it was thought eminently necessary to put him to his *audita querela*.[19]

A like procedure has been followed where the plaintiff has on motion sought relief similar to that asked in the principal case. Where there was no conflict of evidence the plaintiff's motion was granted, as has been pointed out above.[20] Where the plaintiff in effect asked to have a release set aside because of fraud, which was denied by the defendant, the defendant was put to his *audita querela*.[21] Later cases, in which material facts were put in issue, dismissed the motion and ordered an action to be brought,[22] directed the framing of issues[23] or sent the case to equity.[24]

In view therefore of the fact that the granting of relief to a de-

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a cause of action. The court seems to have admitted the propriety of the defendant's seeking his relief by motion, intimated at p. 805, that *audita querela* would have been the better practice.

[15] See Wicket *v.* Creamer (1699), 1 Salk. *264.

[16] Hooper *v.* Smith (1889), 74 Wis. 530, 43 N. W. 556; Lister *v.* Mundell (1799), 1 Bos. & Pul. 427.

[17] Cooley *v.* Gregory (1862), 16 Wis. *303; Horner & McCann *v.* Hower (1861), 39 Pa. 126.

[18] Lansing *v.* Orcott (N. Y. 1819), 16 Johns. 4.

[19] In Wardell *v.* Eden, *supra*, footnote 8, Kent, J., at p. 262, said: "But, as Lord Holt observed, (1 Ld. Ray. 439, 445. 1 Salk. 264) if the ground of the application be a release, or other matter of fact, it is reasonable to put the party to his *audita querela*, because the plaintiff may deny it; and if he deny it, the court will not relieve upon motion."

[20] *Supra*, footnote 3.

[21] Baker *v.* Ridgway (1824), 2 Bing. 41. In this case, the plaintiff, induced by the fraud of the defendant, who had been taken in custody for debt, released the defendant but subsequently retook him. The defendant moved that he be discharged from custody and satisfaction entered on the record. The plaintiff contended that the fraud had rendered the previous release nugatory, which is essentially the same as asking for a cancellation of a written release. He was met by affidavits denying the fraud. The court refused to pass on this question, and put the defendant to his *audita querela*.

[22] See Chapman *v.* Blakeman (1884), 31 Kan. 684, 3 Pac. 277; Fox *v.* State (1901), 63 Neb. 185, 186, 88 N. W. 176.

[23] McDonald *v.* Falvey (1864), 18 Wis. *571; see Watts & Joyner *v.* Norton (Ga. 1831), R. M. Charlton 353.

[24] Barrett *v.* Lingle (1889), 33 Ill. App. 650; but see Martin *v.* Bank of the State (1859), 20 Ark. *636.

fendant by vacation of a judgment and entering satisfaction, and. as it is believed, the opposite relief accorded a plaintiff, had a distinctly legal origin, it is submitted that the power of the law court to act in such cases arose not from any inherent "equitable jurisdiction", but is on the contrary primarily a legal power. It is not true historically that to deny the plaintiff relief in equity in Williams *v.* Miller would be to send him to law for "equitable" relief, nor is it true, as has been seen, in the sense that the relief is characteristically "equitable". It is true that equity has not hesitated, in recent years at any rate, to assume original jurisdiction and grant relief in similar cases.[25] But since courts of law also have jurisdiction, it would seem to be simpler and more convenient to say frankly that when equity grants such relief, equitable jurisdiction is exercised, and that when the law gives similar relief, it is in the exercise of a legal jurisdiction.[26]

Thus the decision of the court in the instant case, in so far as it was based on the theory of inherent "equitable jurisdiction" of the courts of law, would seem to have been faulty. But it is believed that the decision can be sustained on other grounds, for, as has been pointed out above, equity can assume original jurisdiction in this class of cases,[27] and § 723 would seem to be inapplicable. For it was admitted that the purpose of this section was to preserve to the defendant his right of trial by jury, and prerequisites to his right here were: the existence of a set of facts capable of conflicting interpretations, and the opinion of the judge that there was sufficient contradiction. Section 723 was not intended to preserve a mere contingent right.[28]

It only remains to consider whether equity, having jurisdiction, could issue an effective decree. It is conceded that the court here could have no physical control over the record in the sister state.[29] The effect that would be given to its decree in West Virginia may perhaps be doubtful and need not be considered here, but it seems clear that the decree would operate in Virginia to render the release nugatory as far as Virginia is concerned, and to give to the judgment, in the latter state, the same legal effect as though the release had never been given.[30]—*Columbia Law Review.*

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[25] Stuart *v.* Peay (1860), 21 Ark. *117; see Kerr *v.* Kerr (1898), 81 Ill. App. 35; Moore *v.* Cairo & Fulton R. R. (1880), 36 Ark. 262, 268.

[26] 30 Harvard Law Rev. 449, 460.

[27] *Supra*, footnote 24.

[28] As was suggested in the principal case, if the plaintiff had sued on the judgment in West Virginia, and the defence had been a plea of the release, an issue properly triable by jury would have been raised by a replication setting up fraud. But, of course, the plaintiff could not have been compelled to proceed in this manner, but might have proceeded by motion.

[29] Burney *v.* Hunter (1889), 32 Ill. App. 441.

[30] Darrow *v.* Darrow (1876), 43 Iowa 411. *Cf.* Dobson *v.* Pearce (1854), 12 N. Y. 156. In this case, a judgment creditor was restrained

Is a Rug Trap?—If a host invite to his recently completed home a guest, who falls upon an unfastened rug laid upon a highly polished floor, is the host liable in damages for the personal injuries sustained?

This unusual question arose in the Wisconsin case of Greenfield *v.* Miller, 180 N. W. 834, annotated 12 A. L. R. 982, which holds that an invited guest or friendly visitor stands on no better footing than a bare licensee, and must take the premises as he finds them, subject to the limitation that the licensor must not set a trap or be guilty of active negligence which contributes to the injury.

The leading case upon the subject is Southcote *v.* Stanley, 1 Hurlst. & N. 247, 156 Eng. Reprint, 1195, 25 L. J. Exch. N. S. 339, 38 Eng. L. & Eq. Rep. 295, 19 Eng. Rul. Cas. 60, where a recovery was denied to one invited to visit a hotel by the proprietor, and who was injured by a large piece of glass which fell from an insecure door when he opened it. One of the judges considered that while the plaintiff remained at the house as a visitor he was in the same position as any other member of the establishment, so far as regards the negligence of the master or his servants, and he must take his chance with the rest. Another of the judges seemed to place this decision upon the ground of the absence of a trap, or of active negligence, saying: "Where a person is in the house of another, either on business or for any other purpose, he has a right to expect that the owner of the house will take reasonable care to protect him from injury; for instance, that he will not allow a trapdoor to be open, through which the visitor may fall. But in this case my difficulty is to see that the declaration charges any act of commission. If a person asked another to walk in his garden, in which he had placed spring guns or mantraps, and the latter, not being aware of it, was thereby injured, that would be an act of commission. But if a person asked a visitor to sleep at his house, and the former omitted to see that the sheets were properly aired, whereby the visitor caught cold, he could maintain no action, for there was no act of commission, but simply an act of omission."

It is thus evident that a rug lying on a polished floor is in no proper sense a mantrap.—*Case and Comment.*

Public Opinion.—Every practitioner, old or young, will find in the course of his experience that, in the presentation of a cause in court, many influences extraneous to the reason of the law must be reckoned with, if he is ambitious to attain justice for his client. In

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by equity in Connecticut from suing on a fraudulently obtained New York judgment. When the defendant was later sued in New York on the judgment, it was held that the Connecticut decree was a good defence. *A fortiori*, would it have been a good defence in Connecticut to a proceeding begun after the equitable decree and based on the judgment?

adducing the facts so as to guard against any unconscious prejudice of the judges, he must know the judge's likes and dislikes as well as his prejudices. To accomplish this a knowledge of his mental temperament, his religious, moral, economic, social and political views must be had. He must have an estimate of the average intelligence of the jury as well as their views on above subjects as far as they are ascertainable and pertinent to the issues in question. In comparison to popular opinion these influences are merely incidental.

Popular opinion is a force which stimulates and affects every branch of the body politic. It penetrates into the executive department, into the legislative hall, and into the halls of justice. It is the guide post for the statesman, and frequently has the force and effect of law. It exerts an influence on justices of the peace, coroners, petit and grand juries, and even on the judges.

In all criminal cases and in some civil cases the public frequently manifests an interest proportionate to the seriousness of the crime and the importance of the question at issue in the civil case. The people are quick to form an opinion, and with the aid of the press of the merits of the controversy, contemporaneously with its progress, raises a psychic zephyr which is wafted in the court room and stimulates judge and jury. Counsel, in order to be successful, must temper his own shearing action or inaction according to this breeze blowing in upon the jurors.

It is well known that the secrecy of the jury chamber is a matter of the past, for the papers give ample evidence of this. Frequently samples of the ballots are published, and almost hourly in an important case information is given out in the press how the jury stand as to conviction and acquittal; and all this is done in violation of the jurors' duty and in violation of the sworn duty of the officers in charge of the jury, who were sworn well and truly to keep the jury, and neither to speak to them themselves, nor to suffer any other person to speak to them, touching any matter relating to the trial. Although jurors who sit from day to day during a long trial which is daily reported in the local press, are admonished by the judge to abstain from reading the papers, still impanelled jurors will nevertheless persist in reading the daily accounts of the trial in which they sit as judges. No better illustration for an opportunity to cause a disagreement can be found than the following: In a trial for murder, one newspaper while the trial was coming to a close, printed a well reasoned expression of belief that a verdict of guilty would inevitably be reached, while another paper of the same date gave expression to the very opposite belief. These papers in the event of getting into the hands of different jurors might lead to a disagreement.

Public opinion is not usually formed by the adjudication of the tribunal, but by the comments of a number of writers for the press,

and in many cases this is unfair to the accuser and the accused, because it is a defeat of the very object of judicial inquiry.

Every man accused of a crime of felony has a right to a fair and impartial trial as guaranteed by the constitution, and he has a right to be heard unprejudiced as to any explanation he may make of his conduct as well as the right to plead any extenuating or mitigating circumstances he may have in answer to the accusations. Popular opinion is naturally prone to prejudices on account of personality, nationality, social position, religious sentiments and politics, and often in its overzealousness to mete out justice creates a state of intolerance which is apt unconsciously to influence the judicial atmosphere, thereby interfering with a calm deliberation upon whatever extenuating or mitigating circumstances there may be.

Many crimes for which prisoners had been indicted demanded the speediest possible expiation, but even in such cases it is wise for the court to decree an adjournment to such time when popular opinion and public claimor might not prejudice the administration of justice, for real justice can only be attained when unfettered by external influences.

Popular opinion as a force and determining factor in judicial decisions will next be discussed. This proposition, however, voices a sentiment that the use of this great power in its influencing qualities upon the judiciary should be exercised by it with caution. It cannot be denied that judicial opinions have reflected the popular and political feeling of the times. Too rigid adherence to authority is not always wise, for it can be strained until it snaps. Theory may be perfect, but practice can never be perfect. Public interest increases proportionately to the importance of the question to be determined, and for this reason popular opinion is a force that must be reckoned with in law. As a good illustration of the influence of popular opinion of the time upon judicial decisions, the "Dred Scott case" in 1856 will suffice. The great public measures with few exceptions in those days were viewed in and out of Congress largely in the light of its relations to slavery. The South stood unanimously for it, while the North was divided. The Supreme Court of the United States consisted of eight judges. The chief justice and four of his associates were from the South. They with one of the justices from the North held the doctrine that the Missouri compromise was unconstitutional and void, while the other two held the act to be valid. In the former's decision they maintained that the acts purported to dictate to the people of the United States what should be the character of their local institutions. "I look in vain," said Associate Justice Campbell, of Louisiana, one of the strongest and most influential judges on the bench, "for the assertion of a supreme sovereign for Congress over the territory then belonging to the United States, or that they might thereafter acquire. I seek in vain for an annunciation that

a constitutional power had been inaugurated, whose subject comprehended an empire, and which had no restriction but the discretion of Congress. This disturbing element of the Union entirely escaped the apprehensive provisions of Samuel Adams, George Clinton, Luther Martin and Patrick Henry; and in respect to dangers from power vested in a central government over distant settlements, colonies or provinces, their instincts were always alive. Not a word escaped them to warn their countrymen that here was a power to threaten the landmarks of the federative Union, and with them the safeguards of popular and constitutional liberty; or that on our soil, a single government over a vast extent of country—a government foreign to the persons over whom it might be exercised, and capable of binding those not represented, by statute, in all cases whatever." Dred Scott *v.* Sandford, 19 Howard's Reports.

A half of a century later popular opinion was nearly equally divided upon the question, what is the extent of congressional authority over our new possessions? This question was brought before the United States Supreme Court for decision in the Philippine and Porto Rican cases, and the court was nearly equally divided. The chief justice and three of his associates decided that congressional authority must be exercised in subordination to certain express provisions of the constitution. The majority of the justices took a different view, though they were not agreed as to the reasons for the judgment.

The decisions of Chief Justice Marshall in the Dartmouth College cases, with regard to the inviolability of corporate charters, have in effect been overruled in later decisions of the Supreme Court. In the late decisions the Court has followed popular opinions, and thereby causing a consequent change in the constitutional rule. However, in the Slaughter House cases the Supreme Court of the United States has followed the reasoning of the law, and not the trend and reasoning of popular opinion. The decision of the court was a successful modification of the rule found in the Fourteenth Amendment.

The State Courts of last resort follow in line with the United States Supreme Court concerning the influence of popular opinion. In Wisconsin the Supreme Court in its discussions in the so-called Treasury cases was influenced largely by popular opinion. The weight of reason and authority were nearly evenly balanced, so that popular opinion tipped the scale of justice in its favor.

These illustrations will suffice to show the importance of the practitioner's being familiar with the trend of popular opinion wherever it manifests itself in judicial procedure, so that by sound reasoning in the law he may overcome its force and effects.—*American Legal News.*

Husband of Deceased Daughter Not "Son-in-Law."—A mother upon the marriage of her daughter in 1890 became a member of the family of her daughter's husband, and made her home with him until the time of her death, in 1916. He for nearly the whole time paid part or all of certain assessments on a $4,000 death benefit certificate of the mother in which his wife was the beneficiary. After the wife's death, in 1915, the mother had the certificate canceled, and a new one issued, naming the daughter's husband as the sole beneficiary, which certificate was in force at the time of her death. The amount paid by the daughter's husband on the certificate amounted to $3,852. He caused proper proofs of her death to be made, and the insurer was about to pay the amount of the certificate when enjoined from doing so by her sons, who were her only heirs at law. The case was heard on appeal by the Supreme Court of Tennessee in Allen *v.* Cunningham, 223 Southwestern Reporter, 450, where it was held that the daughter's husband was not a son-in-law, within the act entitling such persons to be named as beneficiaries of death benefit certificates, the relationship having terminated on the daughter's death, and that he could not legally be designated as beneficiary. It was also held, however, that he was entitled to an equitable lien on the proceeds of the certificate for the amount paid by him in assessments, with interest, amounting to $4,430.02. Judge Hall wrote the opinion.

Release of Accused by Sheriff Not Evidence of Innocence.—The act of a sheriff in permitting one accused of stealing chickens to go at large while awaiting trial without giving bail in the amount fixed by the court, if he did so, was held by the Supreme Court of Indiana to be no proof of the innocence or guilt of the accused, in Selby *v.* State, 128 Northeastern Reporter, 356. It was also held that the fact that the accused did not flee when he learned that the chickens had been found, and that he was suspected of stealing them, was legitimate matter for consideration by the jury and for comment by counsel. Judge Ewbank, who wrote the opinion, was of the belief that the sheriff's action had no more tendency to prove the innocence of the accused than would the action of a neighbor in signing his bail bond as surety for his appearance.

Minister Violates Corrupt Practices Act.—Andrew J. Volstead, member of Congress from the Seventh congressional district of Minnesota, and O. J. Kvale, a minister of the Lutheran Church, were opposing candidates for the Republican party nomination for member of Congress at the recent primary election. The latter received a majority of the votes cast, and was declared the nominee by the canvassing board. A petition to contest the right to the nomination was filed charging that the Corrupt Practices Act had been violated, and after

a full hearing the district court held that the contestee had been illegally nominated, and that his opponent was therefore duly nominated as the Republican candidate. Upon appeal the Minnesota Supreme Court, in Flaten *v.* Kvale, 179 Northwestern Reporter, 213, affirmed the judgment after having eliminated the clause declaring Volstead the nominee for the office. It was conceded that Mr. Kvale wrote, and caused to be printed and distributed, as charged, a statement to the effect that Mr. Volstead was a pronounced atheist and opposed to the Bible, his action being provoked by alleged sneering allusions to his preaching upon the miracle of the loaves and fishes, and after having been informed by divers persons that his opponent was an atheist and did not believe in the Bible. In discussing the probable effect of the action of Mr. Kvale, Judge Quinn said:

"Mr. Volstead was, and for several years had been, the member of Congress from the Seventh district. The contestee was a minister of the gospel, ordained in the Lutheran Church, and had for about three years been in charge of a congregation at Benson, in said district. He was a stranger to Mr. Volstead, never having met him. The Lutheran Church had a very large following in the district: its churches being almost as numerous therein as the country schoolhouses. * * * The circular was distributed among the voters of the district but four days before the primary was held. It can hardly be successfully contended that a charge made by a minister of the gospel to followers of his faith that a particular candidate for office who seeks their support is an atheist and disbeliever in God would not have a material influence upon the voters to whom it is communicated."

Note.—Mr. Volstead was subsequently selected by the Republican committee as the party standard bearer, and at the final election defeated the Rev. Kvale, who, in the meantime, was nominated by petition.